

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 27, 2009

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA INTERAGENCY MAIL

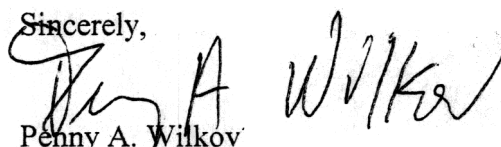
RE: Docket No. 458-09-0897; Texas Alcoholic Beverage Commission, and Westlake Neighborhood, Waco, Texas vs. N & PE Ratso's Private Club d/b/a Ratso's Private Club (TABC Case No. 580088)

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Penny A. Wilkov
Administrative Law Judge

PAW/ap
Enclosure

xc: Emily Helm, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA INTERAGENCY MAIL**
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA MAIL INTERAGENCY MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with Applicant's Exhibits 1, 2, 3, 4, 5, 6 and 7; Protestant's Exhibits 1, 2, 3, 4, 5, 6, and 7; TABC's Exhibits 1 and 2; and 1 CD of hearing on the merits dated 12/04/08)
William F. Brown, Attorney & Counselor at Law, 210 North Sixth Street, Waco, TX 76701- **VIA REGULAR MAIL**
Carmen Young, 108 Elmore, Waco, TX 76712- **VIA REGULAR MAIL**

SOAH DOCKET NO. 458-09-0897

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, and	§	
	§	
WESTLAKE NEIGHBORHOOD, WACO,	§	
TEXAS	§	OF
	§	
VS.	§	
	§	
N & PE RATSO'S PRIVATE CLUB	§	
D/B/A RATSO'S PRIVATE CLUB	§	
(TABC CASE NO. 580088)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Ratso's Private Club (Applicant or Ratso's) has applied to the Texas Alcoholic Beverage Commission (TABC or Commission) for a Private Club Registration Permit and a Beverage Cartage Permit for premises located at 6285 Highway 6 North, Waco, McLennan County, Texas. The Protestants (Protestants), consisting of local area residents, assert that the permits should be denied based upon the general welfare, peace, morals, and safety of the people. The Commission's staff (Staff) did not take a position concerning the application. This proposal for decision recommends that the permits be issued.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Staff issued a notice of hearing on November 13, 2008, informing all parties that a hearing would be held on the application, as required by § 2001.052 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001. The public hearing was convened on December 4, 2008, in Waco, Texas, before Penny A. Wilkov, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Staff appeared and was represented by Emily E. Helm, a Commission Staff Attorney. Applicant appeared and was represented by Attorney William F. Brown. Protestants were represented by their citizen-representative, Carmen Young. The hearing concluded and the record closed that same day.

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without discussion here.

II. DISCUSSION

A. Applicable Law

Protestants challenge the application on the basis of § 11.46(a)(8) of the Texas Alcoholic Beverage Code, which provides that the commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that:

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

In a protest hearing, the burden is on the Protestants to show by a preponderance of the evidence that the permits should not be issued.

B. Background

Ratso's is located on a one-acre parcel in a chiefly rural portion of Waco, Texas, at the corner of Highway 6 and Our Road. Our Road is a commercial area with several small businesses and with two intersecting streets, Elmore Drive and Holstead Drive, with roughly 10 houses on each street. Our Road empties on to Speegle Road, which runs parallel to Highway 6. Hog Creek Icehouse, a bar and restaurant, is located a few miles north on Highway 6, and also intersects a street that empties out to Speegle Road.

Ratso's is currently operated as a private rental venue for parties and weddings, with a capacity for 100 people and approximately 70 parking spaces. Presently patrons must bring all alcoholic beverages to be consumed.

C. Primary Evidence Arg

Testimony Case

Neighborhood Mr. Young, Randal, and Jerry Balzen, testified on behalf of the Protestant community. They introduced several exhibits: a petition opposing the permit for a 40-acre residential development and photographs. Protestants collectively cited several reasons for the permit: increased traffic, parking, and security.

Mr. Young, who resides nearby Elm Drive, testified that her chief concern is that patrons will use Our Road as a back road often to bypass the highway patrol. Highway She noted the neighborhood is composed of small children and trees, the reason for the concern is the ability to manage the increased traffic, noise, and security. Another traffic problem, according to Mr. Young, is the gate surrounding the premises and the bottleneck created by potential traffic onto Highway 101 from Our Road. However, on cross-examination, Mr. Young conceded that the traffic and noise problem have not materialized. The Ratsofsky property is a private residence.

Mr. Scott, Vice Department Marshal, also testified. Mr. D. As a certified peace officer and occasional traffic officer, he has personally witnessed the problems created when alcohol and neighborhoods are involved, including intoxicated drivers, reckless driving, street racing, and traffic jams. He, too, expressed concern with the gated driveway to the club and the potential for traffic problems relating to Highway 101 from Our Road. On cross-examination, Mr. Scott agreed that TAB agents have been in the neighborhood since the protest.

Mr. Balzen testified that Our Road for the past several months prior to the hearing, he had witnessed several motor vehicles entering the club. He expressed the concern of disturbance or an accident due to traffic.

Although these reasons Protestants argue that the permit is detrimental to the community health, safety, and welfare if the permit is granted in this case.

App

Randal Lee Gerik, Ratso pro ded stimo exhibits luding ph otographs parki to tract. parking agram, and peti gned by area-re dents upporin the permu Appli argues tha the permu will enable th ib to tr the premi and negati impact traffic safety the manner alleged by Protestants

As to safety and securi fr Gerik testified tha if Ratso granted the permit, ill be better po to control and monito alcohol consumptio and to prevent behavioral problems than the prese prac ice of "bring beverage to rental venue Mr Gerik also stressed that he has in sted upgrades for Ratso including dou insulation fo noise an increased sentic system fo ealth safety extra gates to impro security and concrete and gravel upgrades to the parking granted the permu Mr Gerik lans to gn two staff members to itor the premises eighborhood.

Mr Gerik to ert traffi pro by designating Our Road the nl trance thereby pre enting cars from stackin up Highway imilarl he wil instal gns eading High discouraging Our Road from being used ut-thro gh to the back ad of peegle Rd Mr Gerik also produced to ing tract to remo illegally parked automobil Mr Gerik also po ed ut tha the by bar Hog Creek oeh use located High ray has not used pro th traffic and security although has imilar cut-through to peegl Rd located near ential ar

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The Commi ted the ony TABC Agen R ben uarez who testi ed that ed estigati nstigated by the protes issues. hi the ppl th proposed sed premise thin restricted areas surroundin

school, church, day care or social service facility. He also checked the history of "9-1-1" disturbance calls at this location and found nominal activity. Further, according to Agent Suarez, the Texas Department of Transportation (TxDOT) would install necessary signage to prevent parking on Highway 67 or Our Road. The Texas Department of Public Safety (DPS) would be responsible for enforcement. Thus, he concluded that his investigation showed no legal impediment to issuing a permit.

D. Analysis

After considering the evidence, the ALJ concludes there is no reasonable basis for denying the permit based on the community's general health, peace, morals, safety, and sense of decency.

Residential area security, traffic, and parking difficulties were the chief concerns cited by Protestants as a reason to deny the permit. The evidence, however, reinforces that a permit will offer more security and control over the existing private club where patrons bring alcoholic beverages to consume. With a permit, for instance, the TABC can conduct investigations and regulate alcohol service to minors, excessive consumption, and criminal activity. Applicant's staff will be required to attend training to learn policy, rules, and laws. Thus, TABC oversight and regulation are feasible with a permit.

The evidence also establishes that parking and traffic patterns will be reasonably controlled in order to minimize danger to area residents. Agent Suarez testified that TxDOT will provide parking signage along Highway 6 and Our Road, enforceable by DPS. Applicant has also agreed that the club exit will be on Highway 6, discouraging the use of Our Road as a cut-through to Speegle Road, while the entrance to the club will be on Our Road, minimizing a Highway 6 traffic jam. Applicant has also entered into a contract with a company to remove illegally parked vehicles and has a gate that defines the perimeter.

Lastly, since alcoholic beverages are already sold and served a few miles away on Highway 6, it cannot be supported that permit approval will impact the morals and public decency in the area.

Therefore, because the Applicant appears to have met all other requirements for the issuance of the permits, and there is no basis for denying the application, the ALJ recommends that the application be granted and the requested permits be issued. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

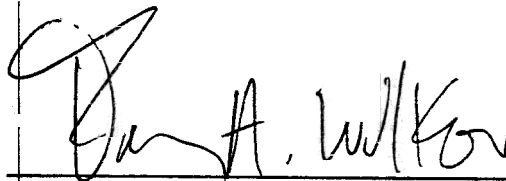
1. Randall Lee Gerik, on behalf of Ratso's Private Club (Applicant or Ratso's), filed an original application with the Texas Alcoholic Beverage Commission (the Commission or TABC) for a Private Club Registration Permit and a Beverage Cartage Permit for premises located at 6285 Highway 6 North, Waco, McLennan County, Texas.
2. Protests to the application were filed by residents of the area where the premises are located.
3. On November 13, 2008, the Commission's Staff issued a notice of hearing informing the parties of the time, date, and location of the hearing on the application; the applicable rules and statutes involved; and a short, plain statement of the matters asserted.
4. A public hearing was convened on December 4, 2008, in Waco, Texas, before Penny A. Wilkov, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Staff appeared and was represented by Emily E. Helm, a Commission Staff Attorney. Applicant appeared and was represented by Attorney William F. Brown. The protesting citizens (Protestants) were represented by their citizen-representative, Carmen Young. The hearing concluded and the record closed that same day.
5. The proposed licensed premises, Ratso's, is located in a chiefly rural portion of Waco, Texas, on a one-acre parcel at the corner of Highway 6 and Our Road.
6. Our Road is a commercial area with several small businesses and with two intersecting streets, Elmore Drive and Holstead Drive, containing roughly 10 houses on each street.
7. Ratso's is currently operated as a private rental venue for parties and weddings, with a capacity for 100 people and approximately 70 parking spaces. Currently patrons must bring all alcoholic beverages to be consumed.
8. A permit will offer more security and control at the private club because with a permit, the TABC can conduct investigations and regulate alcohol service and require club staff to attend training.
9. Parking and traffic patterns will be reasonably controlled in order to minimize danger to area residents.

10. Ratso's is not in close proximity to other facilities which might be incompatible with the sale of alcohol (such as a hospital, church, drug and alcohol treatment center, or school).

IV. CONCLUSIONS OF LAW

- 1 The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
- 3 Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the foregoing findings of fact, issuance of the requested permits will not adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency, in violation of TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
- 5 Based on the foregoing findings and conclusions, the application of Ratso's Private Club for a Private Club Registration Permit and a Beverage Cartage Permit should be granted.

SIGNED January 27, 2008.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS